

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4170

To amend the Federal Deposit Insurance Act and the Federal Credit Union Act to require insured depository institutions to include information on derivative financial instruments in reports of condition, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 1994

Mr. GONZALEZ introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

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## A BILL

To amend the Federal Deposit Insurance Act and the Federal Credit Union Act to require insured depository institutions to include information on derivative financial instruments in reports of condition, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Derivatives Safety and  
5       Soundness Act of 1994”.

1 **SEC. 2. DISCLOSURE OF AMOUNTS, NATURE, AND TERMS**  
2 **OF DERIVATIVE FINANCIAL INSTRUMENTS IN**  
3 **DEPOSITORY INSTITUTION CALL REPORTS.**

4 (a) INSURED DEPOSITORY INSTITUTIONS.—The Fed-  
5 eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is  
6 amended by adding at the end the following new section:

7 **“SEC. 44. DISCLOSURE REQUIREMENTS FOR DERIVATIVE**  
8 **FINANCIAL INSTRUMENTS.**

9 “(a) INFORMATION REQUIRED TO BE INCLUDED IN  
10 CALL REPORTS.—Any report of condition made by any  
11 insured depository institution in accordance with section  
12 7(a) with respect to any period beginning after December  
13 31, 1994, shall include the following information:

14 “(1) QUANTITATIVE INFORMATION WITH RE-  
15 SPECT TO ALL DERIVATIVE FINANCIAL INSTRU-  
16 MENTS.—

17 “(A) GROSS NOTIONAL AND FAIR  
18 VALUE.—The gross notional value and the  
19 gross fair value of any holding, position, or  
20 other interest of the institution in any deriva-  
21 tive financial instrument.

22 “(B) REVENUE, GAINS, AND LOSSES.—All  
23 revenue, gains, and losses of the institution at-  
24 tributable to any holding, position, or other in-  
25 terest of the institution in any derivative finan-  
26 cial instrument.

1           “(C) EXPOSURE UNDER BILATERAL NET-  
2           TING CONTRACT.—The net current credit expo-  
3           sure of the institution under legally enforceable  
4           bilateral arrangements with respect to any hold-  
5           ing, position, or other interest of the institution  
6           in any derivative financial instrument.

7           “(2) TERMS TO MATURITY.—Information on  
8           the remaining term to maturity of any holding, posi-  
9           tion, or other interest of the institution in any deriv-  
10          ative financial instrument.

11          “(3) QUANTITATIVE INFORMATION WITH RE-  
12          SPECT TO DERIVATIVE FINANCIAL INSTRUMENTS  
13          HELD FOR TRADING PURPOSES.—

14               “(A) AVERAGE FAIR VALUE BALANCES.—  
15               The average maximum and minimum fair value  
16               balances of the insured depository institution  
17               during the period covered by the report with re-  
18               spect to any holding, position, or other interest  
19               of the institution in any derivative financial in-  
20               strument which is acquired or taken by the in-  
21               stitution for trading purposes.

22               “(B) REVENUE, GAINS, AND LOSSES.—All  
23               revenue, gains, and losses of the institution at-  
24               tributable to trading account operations involv-  
25               ing any holding, position, or other interest of

1 the institution in any derivative financial instru-  
2 ment.

3 “(b) REQUIREMENTS APPLICABLE TO REPORTING  
4 UNDER SUBSECTION (a).—

5 “(1) SEPARATE REPORTING FOR EXCHANGE  
6 AND OTC TRADING.—To the maximum extent pos-  
7 sible, information reported pursuant to paragraphs  
8 (1) and (2) of subsection (a) with respect to trans-  
9 actions which are conducted on an exchange, and the  
10 holdings, positions, or other interests in derivative fi-  
11 nancial instruments which are the subjects of such  
12 transactions, shall be provided separately from infor-  
13 mation relating to transactions which are conducted  
14 over the counter, and the holdings, positions, or  
15 other interests in derivative financial instruments  
16 which are the subjects of such transactions.

17 “(2) EXEMPTION BY AGENCY PROHIBITED.—A  
18 Federal banking agency may not—

19 “(A) exempt any insured depository insti-  
20 tution from the requirements of subsection (a);  
21 or

22 “(B) allow any exception to any such re-  
23 quirement with respect to any insured deposi-  
24 tory institution,

1 unless the agency determines that such exemption or  
2 exception is in the public interest and submits a  
3 written notice of such determination and a detailed  
4 description of the reasons for the determination to  
5 the Committee on Banking, Finance and Urban Af-  
6 fairs of the House of Representatives and the Com-  
7 mittee on Banking, Housing, and Urban Affairs of  
8 the Senate at least 30 days before the effective date  
9 of the exemption or exception.

10 “(c) QUALITATIVE REPORTING REQUIREMENTS.—  
11 The Federal banking agencies shall take such action as  
12 may be appropriate to encourage insured depository insti-  
13 tutions to publicly report the following information with  
14 such frequency as the agencies determine to be appro-  
15 priate:

16 “(1) NATURE OF DERIVATIVE FINANCIAL IN-  
17 STRUMENTS.—A description of—

18 “(A) the purposes for which any holding,  
19 position, or other interest of the institution in  
20 any derivative financial instrument has been ac-  
21 quired or taken by the institution during the  
22 period since the prior report, including the spe-  
23 cific objectives of the institution;

24 “(B) the overall operating and investment  
25 strategies of the institution which provide the

1 context for acquiring or taking any such hold-  
2 ing, position, or other interest in any derivative  
3 financial instrument; and

4 “(C) the manner in which the institution  
5 acquires or takes a holding, position, or other  
6 interest in a derivative financial instrument in  
7 furtherance of the purposes and objectives for  
8 such activities.

9 “(2) ACCOUNTING POLICIES AND METHODOLOG-  
10 OGY FOR DETERMINING FAIR VALUE AND OTHER  
11 AMOUNTS.—A description of the accounting policy  
12 and principles and the methodologies used by the in-  
13 stitution to determine—

14 “(A) the fair value of the various types of  
15 holdings, positions, and other interests of the  
16 institution in derivative financial instruments;  
17 and

18 “(B) any other amount required to be re-  
19 ported under subsection (a) with respect to any  
20 such holding, position, or other interest.

21 “(d) CONFIDENTIAL EMERGENCY MANAGEMENT RE-  
22 PORTING.—

23 “(1) IN GENERAL.—Before the end of the 1-  
24 year period beginning on the date of the enactment  
25 of the Derivatives Safety and Soundness Act of

1       1994, the Federal banking agencies shall develop the  
2       means to obtain, on a nightly basis, all necessary in-  
3       formation from any insured depository institution, or  
4       any affiliate of any such institution, which is a deal-  
5       er in derivative financial instruments or is an active  
6       end-user relating to any activity of such institution  
7       or affiliate which involves derivative financial instru-  
8       ments or any holding, position, or other interest in  
9       a derivative financial instrument if the agency deter-  
10      mines that the agency needs such information as a  
11      result of adverse market conditions or other emer-  
12      gency situation (as defined by the agency).

13           “(2) ACCESSIBILITY OF INFORMATION.—Each  
14      insured depository institution referred to in para-  
15      graph (1) shall—

16           “(A) obtain such information and make  
17           and keep such records as the appropriate Fed-  
18           eral banking agency may require by regulation  
19           for purposes of such paragraph; and

20           “(B) promptly provide to the agency any  
21           information requested by the agency pursuant  
22           to such paragraph.

23           “(3) CONFIDENTIALITY OF INFORMATION PRO-  
24      VIDED.—No information provided to or obtained by  
25      a Federal banking agency pursuant to paragraph (1)

1 with respect to any insured depository institution or  
2 any affiliate of any such institution may be provided  
3 to any person or entity other than another Federal  
4 regulatory agency with jurisdiction over the insured  
5 depository institution or affiliate without the prior  
6 written approval of the agency.

7 “(e) ADMINISTRATIVE PROVISIONS.—

8 “(1) ENHANCED REGULATORY COOPERATION.—

9 The Federal banking agencies and the National  
10 Credit Union Administration Board shall jointly de-  
11 velop uniform definitions, reporting requirements,  
12 capital standards, and examination guidelines and  
13 procedures with respect to activities of insured de-  
14 pository institutions and insured credit unions which  
15 involve derivative financial instruments or to any  
16 holding, position, or other interest of any such insti-  
17 tution or credit union in any such instrument.

18 “(2) STANDARDIZED METHODOLOGIES FOR ES-

19 TIMATING FAIR VALUES.—The Federal banking  
20 agencies and the National Credit Union Administra-  
21 tion Board shall jointly take such action as may be  
22 appropriate to encourage insured depository institu-  
23 tions and insured credit unions to develop standard  
24 methodologies and assumptions which may be used  
25 in estimating the fair value of any holding, position,



1 or other interest of any such institution in any deriv-  
2 ative financial instrument for use in preparing re-  
3 ports of condition.

4 “(3) ACCOUNTING STANDARDS.—The Federal  
5 banking agencies and the National Credit Union Ad-  
6 ministration Board, in consultation with the Finan-  
7 cial Accounting Standards Board, shall develop and  
8 implement accounting standards for derivative finan-  
9 cial instruments which are uniformly applicable to  
10 insured depository institutions and insured credit  
11 unions.

12 “(4) INCLUSION OF FDIC AND OCC AS PRIN-  
13 CIPALS IN INTERAGENCY TASK FORCE.—The Sec-  
14 retary of the Treasury shall include the Chairperson  
15 of the Federal Deposit Insurance Corporation and  
16 the Comptroller of the Currency as principals on any  
17 interagency task force or working group dealing with  
18 issues relating to derivative financial institutions.

19 “(f) REQUIREMENTS RELATING TO DIRECTORS AND  
20 SENIOR EXECUTIVE OFFICERS.—

21 “(1) EFFECTIVE MANAGEMENT OVERSIGHT.—  
22 No insured depository institution may engage in ac-  
23 tivities involving derivative financial instruments  
24 without a management plan which ensures that such  
25 activities are—

1           “(A) conducted with appropriate direct  
2 oversight of the directors and the senior execu-  
3 tive officers (as defined pursuant to section  
4 32(f)) of the institution;

5           “(B) conducted in a safe and sound man-  
6 ner; and

7           “(C) consistent with the overall risk man-  
8 agement philosophy and the business strategy  
9 of the management of the institution.

10          “(2) REQUIREMENT FOR DIRECTORS.—No in-  
11 sured depository institution may act as a dealer in  
12 derivative financial instruments or as an active end-  
13 user unless a sufficient number of the directors of  
14 such institution are familiar with the risks associ-  
15 ated with each holding, position, or other interest of  
16 the institution in any derivative financial instrument  
17 and the total current credit exposure of the institu-  
18 tion with respect to the holdings, positions, and  
19 other interests of the institution in derivative finan-  
20 cial instruments and activities of the institution re-  
21 lating to such holdings, positions, and other inter-  
22 ests.

23          “(3) ENFORCEMENT.—In the case of the failure  
24 of any insured depository institution to comply with  
25 the requirements of this subsection, the appropriate

1 Federal banking agency shall, in addition to such  
2 other enforcement action the agency may determine  
3 to be appropriate—

4 “(A) treat the failure as an unsafe or un-  
5 sound practice in conducting the business of the  
6 institution;

7 “(B) issue a notice under section 8(e) to  
8 the chairperson of the board of directors of the  
9 institution, and any other director of the insti-  
10 tution the agency determines to be appropriate,  
11 of the agency’s intention to remove the chair-  
12 person or other director from office; and

13 “(C) assess a civil penalty under section  
14 8(i)(2) on any appropriate institution-affiliated  
15 party.

16 “(g) DEFINITIONS.—For purposes of this section, the  
17 following definitions shall apply:

18 “(1) ACTIVE END-USER.—

19 “(A) IN GENERAL.—The term ‘active end-  
20 user’ means any insured depository institution  
21 or any affiliate of any insured depository insti-  
22 tution which buys or sells high volumes of de-  
23 rivative financial instruments, or conducts  
24 transactions in a wide variety of derivative fi-  
25 nancial instruments, in order to manage the ex-

1           posure of the institution or affiliate to individ-  
2           ual or multiple market factors.

3           “(B) OTHER TERMS.—The terms “high  
4           volumes” and “wide variety of transactions”, as  
5           used in subparagraph (A), shall have the mean-  
6           ings prescribed for such terms by the appro-  
7           priate Federal banking agency by regulation.

8           “(2) DERIVATIVE FINANCIAL INSTRUMENT.—

9           The term ‘derivative financial instrument’ means—

10           “(A) an instrument the value of which is  
11           derived from the value of other assets, interest  
12           or currency exchange rates, or indexes, includ-  
13           ing qualified financial contracts (as defined in  
14           section 11(e)(8)); and

15           “(B) any other instrument which an ap-  
16           propriate Federal banking agency determines,  
17           by regulation or order, to be a derivative finan-  
18           cial instrument for purposes of this section.”.

19           (b) INSURED CREDIT UNIONS.—Section 202(a) of  
20           the Federal Credit Union Act (12 U.S.C. 1782(a)) is  
21           amended by adding at the end the following new para-  
22           graph:

23           “(8) DERIVATIVE FINANCIAL INSTRUMENTS.—

24           “(A) IN GENERAL.—The reports of condi-  
25           tion made by insured credit unions under this

1 section shall include all the information with re-  
2 spect to derivative financial instruments which  
3 are required, under section 44 of the Federal  
4 Deposit Insurance Act, to be included in reports  
5 of condition made by insured depository institu-  
6 tions (as defined in section 3 of such Act).

7 “(B) APPLICABILITY OF SECTION 44 OF  
8 THE FEDERAL DEPOSIT INSURANCE ACT.—Sec-  
9 tion 44 of the Federal Deposit Insurance Act  
10 shall apply with respect to insured credit unions  
11 and the Board in the same manner such section  
12 applies to insured depository institutions and  
13 Federal banking agencies (as such terms are  
14 defined in section 3 of such Act) and shall be  
15 enforceable by the Board with respect to in-  
16 sured credit unions under this Act.”.

17 **SEC. 3. STUDY OF INTERNATIONAL REGULATION AND SU-**  
18 **PERVISION OF DERIVATIVE FINANCIAL IN-**  
19 **STRUMENTS.**

20 (a) IN GENERAL.—Before the end of the 30-day pe-  
21 riod beginning on the date of the enactment of this Act,  
22 the Secretary of the Treasury shall request a meeting with  
23 the appropriate representatives of the other major indus-  
24 trialized countries to plan a study to examine the adequacy  
25 of the international regulation and supervision of deriva-

1 tive financial instruments (as defined in section 44(f)(2)  
2 of the Federal Deposit Insurance Act).

3 (b) GOALS OF STUDY.—The goals of the study as  
4 proposed by the Secretary of the Treasury shall be as  
5 follows:

6 (1) To foster a greater understanding of the  
7 manner in which derivative financial instruments af-  
8 fect the stability of the world's financial systems and  
9 markets.

10 (2) To examine the adequacy of international  
11 regulation and supervision of derivative financial  
12 activities.

13 (3) To make recommendations for improving  
14 the international regulation and supervision of deriv-  
15 ative financial activities.

16 (4) To foster greater cooperation between all  
17 regulatory agencies with jurisdiction over derivative  
18 financial activities.

19 (5) To make recommendations for action by the  
20 financial regulators in the respective countries that  
21 would facilitate the safe and sound conduct of enti-  
22 ties involved in derivative financial activities.

23 (6) To evaluate the feasibility of establishing a  
24 single governing body to regulate international deriv-  
25 ative financial activities.

1 (c) ISSUES TO STUDY.—The Secretary of the Treas-  
2 ury shall propose that the study include the following  
3 factors:

4 (1) Identification of the manner in which deriv-  
5 ative financial instruments affect the stability of the  
6 world's financial systems and markets.

7 (2) Identification of the various regulatory enti-  
8 ties and mechanisms that are used to regulate and  
9 supervise derivative financial activities around the  
10 world.

11 (3) Analysis of the adequacy of the cooperation  
12 between the various regulatory entities and mecha-  
13 nisms referred to in paragraph (2).

14 (4) Identification of problems that inhibit the  
15 safe and sound conduct of world-wide derivative fi-  
16 nancial activities.

17 (5) Analysis of the extent to which derivative fi-  
18 nancial activities in countries other than the major  
19 industrialized countries affect the safety and sound-  
20 ness of the world's financial systems and markets.

21 (6) Identification of uniform accounting and  
22 public reporting standards for derivative financial in-  
23 struments.

1           (7) Evaluation of the feasibility of establishing  
2           a single governing body to regulate international de-  
3           rivative financial activities.

4           (d) UTILIZATION OF INFORMATION AND RE-  
5 SOURCES.—The Secretary of the Treasury shall propose  
6 that, in conducting the study under this section, the major  
7 industrialized countries should—

8           (1) gather information from a wide variety of  
9           sources including government agencies, central  
10          banks, market participants, and the consumers of  
11          the derivative financial instruments; and

12          (2) to the extent feasible, obtain and use infor-  
13          mation from the International Monetary Fund, the  
14          Bank for International Settlements, and other multi-  
15          lateral organizations.

16 **SEC. 4. GAO STUDY OF SPECULATION, TRANSACTION**  
17 **TAXES, AND MARGIN REQUIREMENTS WITH**  
18 **RESPECT TO DERIVATIVE FINANCIAL IN-**  
19 **STRUMENTS.**

20          (a) STUDY REQUIRED.—

21           (1) IN GENERAL.—The Comptroller General of  
22          the United States shall conduct a study of the spec-  
23          ulative uses of derivative financial instruments (as  
24          defined in section 44 of the Federal Deposit Insur-  
25          ance Act) and the feasibility of imposing taxes and



1 margin requirements on speculative transactions in-  
2 volving derivative financial instruments.

3 (2) REPORT.—The Comptroller General shall  
4 submit a report on the study conducted pursuant to  
5 paragraph (1) to the Congress before the end of the  
6 18-month period beginning on the date of the enact-  
7 ment of this Act.

8 (b) ISSUES INVOLVING SPECULATIVE TRANSACTIONS  
9 INVOLVING DERIVATIVE FINANCIAL INSTRUMENTS.—In  
10 conducting the study under subsection (a)(1), the Comp-  
11 troller General shall—

12 (1) define the term “speculation” as such term  
13 is used in connection with derivative financial instru-  
14 ments;

15 (2) determine the extent to which depository in-  
16 stitutions, including credit unions, use holdings, po-  
17 sitions, and other interests in derivative financial in-  
18 struments to engage in speculation for the institu-  
19 tion’s own trading account; and

20 (3) determine the extent to which depository in-  
21 stitutions, including credit unions, sell holdings, po-  
22 sitions, or other interests in derivative financial in-  
23 struments to—

24 (A) speculators such as hedge funds; or

1 (B) consumers of such financial instru-  
2 ments who are engaged in the use of such hold-  
3 ings, positions, or other interests in derivative  
4 financial instruments for purposes other than  
5 hedging against risks.

6 (c) ISSUES INVOLVING TRANSACTION TAXES AND  
7 FEES.—In conducting the study under subsection (a)(1),  
8 the Comptroller General shall—

9 (1) determine the extent to which any holding,  
10 position, or other interest in a derivative financial  
11 instrument is subject to Federal or State transaction  
12 tax or fee, the entity imposing the tax or fee, the  
13 purpose of the tax or fee, and the amount of annual  
14 revenue derived from the tax or fee;

15 (2) evaluate the feasibility of imposing a tax or  
16 fee on the acquisition or taking of a holding, posi-  
17 tion, or other interest in a derivative financial in-  
18 strument for speculative purposes and estimate the  
19 revenue which would result from such a tax or fee;  
20 and

21 (3) evaluate the competitive impact of the impo-  
22 sition of a tax or fee described in paragraph (2).

23 (d) ISSUES INVOLVING MARGIN REQUIREMENTS.—In  
24 conducting the study under subsection (a)(1), the Comp-  
25 troller General shall—

1           (1) determine which holdings, position, or other  
2           interests in a derivative financial instrument are  
3           subject to margin requirements and the amount and  
4           purpose of the margin requirement;

5           (2) determine the extent to which the trans-  
6           actions of insured depository institutions which in-  
7           volve a holding, position, or other interest in a deriv-  
8           ative financial instrument are conducted over the  
9           counter and evaluate the feasibility of imposing mar-  
10          gin requirements on such transactions;

11          (3) evaluate the feasibility of imposing margin  
12          requirements on any holding, position, or other in-  
13          terest in a derivative financial instrument which was  
14          acquired or taken for speculative purposes; and

15          (4) evaluate the competitive impact of imposing  
16          margin requirements on any holding, position, or  
17          other interest in a derivative financial instrument  
18          which was acquired or taken for speculative pur-  
19          poses.

20          (e) ACCESS TO INFORMATION.—The head of any de-  
21          partment or agency of the Federal Government and any  
22          insured depository institution shall provide, upon the re-  
23          quest of the Comptroller General, such information to the  
24          General Accounting Office as the Comptroller General

- 1 may determine to be appropriate for purposes of carrying
- 2 out the study required under this section.

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